

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,  
  
Plaintiff-Respondent,

v.

DANIEL MCKINNEY,  
  
Defendant-Petitioner.

CASE NO. 1:05-CR-549

OPINION & ORDER  
[Resolving Doc. No. [59](#)]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On March 14, 2006, Petitioner Daniel McKinney pled guilty to one count of possession with intent to distribute cocaine base and one count of being a felon in possession of a firearm.<sup>1/</sup> On April 10, 2006 this Court sentenced Petitioner to 190 months' imprisonment.<sup>2/</sup> On September 26, 2014, Petitioner filed a motion to vacate under [28 U.S.C. §2255](#). On February 23, 2015, this Court denied Petitioner's motion.<sup>3/</sup> Petitioner then applied for a certificate of appealability to the Sixth Circuit. The Sixth Circuit denied Petitioner's application for a certificate of appealability.<sup>4/</sup>

Petitioner has now filed an Affidavit of Facts seeking relief under the Supreme Court's recent decision in [Johnson v. United States](#).<sup>5/</sup> The Office of the Federal Public Defender filed a

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<sup>1/</sup>Doc. [22](#).

<sup>2/</sup>Doc. [25](#).

<sup>3/</sup>Doc. [45](#).

<sup>4/</sup>Doc. [54](#).

<sup>5/</sup>Doc. [58](#); [Johnson v. United States](#), 135 S. Ct. 2551 (2015).

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motion to appoint counsel and request for leave to supplement the pending § 2255 petition.<sup>6/</sup>

However § 2255(h) requires that a second or successive § 2255 motion be certified by a panel of the appropriate court of appeals.<sup>7/</sup> This Court does not have jurisdiction over this matter unless Petitioner receives certification from the Sixth Circuit.

For the above reasons, this Court **DENIES** Petitioner's motion.

IT IS SO ORDERED.

Dated: November 23, 2015

s/ James S. Gwin  
JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE

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<sup>6/</sup>Doc. [59](#).

<sup>7/</sup> [28 U.S.C.A. § 2255](#).